

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8154 of 1997

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BABUBHAI JETHABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR PK JANI for Petitioner
Mr.P.G.Desai, GOVT. PLEADER for Respondent No.1 & 2
MR KS JHAVERI for Respondent No. 3
MR MIHIR H JOSHI for Respondent No. 4

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

Date of decision: 10/12/97

ORAL JUDGEMENT (Per K.Sreedharan CJ.) :

Petitioner claims to be a pro bono publico. He has approached this Court, inter alia, praying for issuance of a writ of mandamus directing respondent nos.

2 and 3 to hold fresh auction for the sale of a land comprised in Revenue Survey No.56/Paiki, City Survey No.2440, Sheet No.112 admeasuring about 4755.59 sq.mts. in Patan town as the value for which it is now being sold is inadequate to the tune of at least Rs.15 lacs.

Short facts necessary for the disposal of this petition are as follows:

Land comprised in Revenue Survey No.56 Paiki, City Survey No.2440, Sheet No.112 having an extent of 4755.59 sq.mts. belongs to the Agricultural Produce Market Committee, Patan (hereinafter referred to as the APMC). It is known as cattle sub-market yard. That land is to be sold by the APMC. In 1993, the APMC issued an advertisement for its sale. One Maganbhai Chaturbhai Patel is stated to have offered Rs.64.71 lacs and made a caution deposit of Rs. 2 lacs. However the sale could not take place. Thereafter at the meeting held on 11-7-1997, the APMC resolved to sell the same. Upset price of that land was fixed at Rs.47 lacs. On 10/12-8-1997 public advertisement was issued inviting offers by 19-8-1997 and the sale was to take place on 20-8-1997. In the meantime on 16-8-1997 one Patel Harshadkumar Keshavlal filed Appeal No.34 of 1997 before the Director of Agricultural Marketing and Rural Finance at Gandhinagar questioning the action of the APMC. The Director stayed further steps in the matter relating to the sale of the property by his order dated 16-8-1997. That order was served on the APMC on 20-8-1997. On 20-8-1997 auction for the sale of the property took place. 4th respondent offered Rs.50.50 lacs as value for the property. The APMC accepted the offer subject to the final outcome of the proceedings pending before the Director. On 23-9-1997 the Director quashed the sale held by the APMC. Fresh sale was directed to be held after complying with the conditions mentioned in the order. The APMC took up the matter in revision before the Government. By order dated 7-11-1997 the Government reversed the decision of the Director. In the meanwhile the APMC was ordered to be superseded by the Government on 3-11-1997. The APMC challenged the order of supersession by filing Special Civil Application No.8161 of 1997. This Court has directed the Government to maintain status quo. Thus the members of the APMC are continuing in office. The petitioner approached this Court by filing this petition on 10-11-1997, He offered to purchase the said property on the same terms and conditions on which 4th respondent was given the land, for Rs.75 lacs. To verify the bonafides of the offer, this Court directed him to deposit 50% of Rs.75 lacs

before this Court on or before 1-12-1997. In compliance with that direction he deposited Rs,37.50 lacs before this Court on 1-12-1997.

On behalf of the APMC its Chairman filed a detailed Affidavit-in-reply. Contentions taken therein are to the following effect.

The present petition purporting to be a public interest litigation is not a bonafide litigation. The petitioner is trying to put forth his personal interest in an attempt to get the property. This petition has been filed with malafide intention and in collusion with the person who moved the Director against the action taken by the APMC to sell the property. Resolution passed by the APMC and the steps taken pursuant thereto were in compliance with the judgment of this Court in Special Civil Application No. 5093 of 1993; hence public offers were invited. The petitioner did not make any offer. No allegation of malafide has been made by the petitioner and so this Court is not to interfere with the sale of the property which was held after compliance with all legal requirements. Government valuer had valued the land in question at Rs.47 lacs. In the auction, price above the price fixed by the valuer has been offered by the 4th respondent. So the sale may not be interfered with.

Additional 4th respondent's bid has been accepted by the APMC. He has filed separate affidavit. After challenging the maintainability of this petition he raised the following contentions:

Petitioner approached this Court only after 5th respondent deposited 25% of the bid amount with the APMC in terms of the auction notice. The advertisement-notification for the sale of the property was published on 12-8-1997. The petitioner did not take any action within a reasonable time therefrom. He approached this Court on 10-11-1997 which is highly belated and on that ground the petitioner has to be non-suited. The Government disposed of the revision application filed by the APMC on 7-11-1997. APMC wrote to this respondent directing to deposit 25% of the bid amount namely 25% of Rs.50,50,000. The auction sale held by the APMC cannot be invalidated on account of the proceedings in Appeal No.34 of 1997 in which the Director issued orders to maintain status quo. The Government Valuer has correctly fixed the value of the land at Rs.47 lacs. Land has been encroached upon by the Police personnel. Taking into consideration the situation of the land, price of

Rs.50.50 lacs can never be considered as inadequate. Offer made by this respondent was higher than the upset price and no higher value was offered by any intending purchaser. So the sale may not be interfered with, especially at the instance of the petitioner who is trying to put forth his personal interest in the guise of public interest litigation.

The land covered by these proceedings is comprised in Revenue Survey No. 56/paiki City Survey No.2440, Sheet No.112 in Patan Town. It is having an area of 4755.59 sq.mts. That land was offered for sale in 1993. The action of the APMC was challenged before this court in SCA No.5093 of 1993. That petition was disposed of by judgment dated 9-11-1995. In that judgment it is observed:

"...The petitioner market Committee is directed to take fresh decision in the matter for sale of the subject land and the same may also be sent to the Director, Agriculture Marketing and Land Finance. It will be open for the Director if at all necessary to put reasonable fetters on the decision of the Market Committee by reasonable conditions after hearing the representatives of the Committee.

After the said decision the Market Committee decided to sell the land by fresh auction. Its decision was notified in the news papers on 10th and 12th August 1997. As per the notification upset price was stated at Rs.47 lacs. Rs.2.5 lacs were to be deposited by the party taking part in the auction and the successful bidder to deposit 25% of the bid amount within one month from the date of auction. The auction was held on 20-8-1997. Seven persons offered to participate in the auction. At this juncture it is worthwhile to note that the APMC did not get any written or oral directions from the Director to hold the auction. While the notification was in force one Patel Harshadkumar Keshavlal filed Appeal No.34 of 1997 under Section 47 of the Act before the Director. On 16-8-1997 the Director issued order calling upon the APMC to maintain status quo as far as the sale is concerned. That order was communicated to the APMC. According to the APMC they received the order in the morning of 20-8-1997. Even so they conducted the auction sale. The additional 4th respondent offered Rs.50.50 lacs. The bid was not finalised in favour of 4th respondent because of the order passed by the Director.

Appeal No.34 of 1997 was allowed by the Director vide order dated 23-9-1997 (Annexure A). According to the Director, when the property was notified for sale on 18-2-1993 one T.M.Shroff of Patan sent a demand draft of Rs.2 lacs with an offer to purchase the land for Rs.64.71 lacs. This conclusion was arrived at by the Director from the letter of G.M.Shroff dated 18-2-1993 and the affidavit dated 16-9-1997 filed by him before the Director. Regarding the valuer's fixation of upset price of Rs.47.00 lacs, the Director came to the conclusion that the details relating to such fixation are not forthcoming. He also opined that the APMC has not got the upset price fixed in accordance with the order passed by this Court in SCA No. 5093/93. Another reason which weighed with the Director to upset the steps taken by the APMC is that the land situated very close to one involved in this case was valued at Rs.2,150/- per sq.mt. and so valuation of this land at Rs.1000/- is ridiculously low. The reasons which weighed with the Director appear to be quite justified on the facts and in circumstances of this case.

Aggrieved by the order of the Director, the APMC took the matter in revision before the Government. The Government reversed the decision of the Director on the ground that there is no documentary evidence to support the offer made by T.M.Shroff in February 1993; that the value fixed by the Government Valuer is not open to challenge and the value of the smaller plot admeasuring 475 sq.mts. cannot be the basis for fixing the value of large plot admeasuring 4750 sq.mts. Here we are constrained to state that the Government did not go into the question as to whether the price fixed at the auction sale in favour of 4th respondent herein was a proper value in the interest of the APMC. If the price which is fetched is ridiculously low it has to be held that the sale was not in public interest.

The main argument advanced by the learned counsel representing the APMC and the additional respondent-auction purchaser is that this application is hopelessly time barred on account of laches of the petitioner. Advertisement for sale of the property was published in the news-paper dated 10th and 12th August 1997. As per that notification offer was to be made in sealed cover on or before 19-8-1997. On 16-8-1997 one Patel Harshadkumar Keshavlal moved the Director, questioning the action of the APMC. On 16-8-1997 the Director passed the order restraining the APMC from proceeding with the sale of the property. So failure on the part of the petitioner to put forth his offer pursuant to the advertisement

-notification can never be urged as a ground to non-suit the petitioner. According to the Director, as seen from the order (Annexure A), the Chairman of the APMC was informed of the order passed in Appeal No.34 of 1997 and requested him to refrain from proceeding with the matter but in total defiance of that oral direction given by the Director, auction was held on 20-8-1997 on which date the written order of the Director was served on the APMC. The Director heard the appeal and quashed the proceedings relating to sale by his order dated 23-9-1997. Therefore, no right accrued in favour of the additional 4th respondent till that date. The APMC took the matter in revision before the Government. That Revision Application was allowed by the Government by order dated 7-11-1997. Thereupon the APMC requested the additional 4th respondent to deposit 25% of the bid amount within 3 days from the date of the order of the Government. The petitioner approached this Court on 10-11-1997. It cannot in the aforesaid circumstances be treated as belated. The petitioner has at the earliest opportunity moved this Court to prevent the sale of the public property at a throw away price.

Learned Counsel representing the auction purchaser -4th respondent - brought to out notice the decision of the Supreme Court in M/s.Kayjay Industries (P) Ltd. Vs. M/s.Asnew Drums (P) Ltd. and others, AIR 1974 SC 1331 to support the argument that inadequacy of the price even if it was there, is no reason for this Court to interfere. The observations made by Their Lordships in the said decision are to be understood with reference to the facts of that case. In that case, in execution of a decree for money a manufacturing Company was sold in auction. That sale was sought to be set aside on the ground that the price fixed was grossly inadequate. In such a situation Their Lordships observed:

"...Indeed under the Civil Procedure Code, it is the Court which conducts the sale and its duty to apply its mind to the material factors bearing on the reasonableness of the price offered is part of the process of obtaining a proper price in the course of the sale. Therefore, failure to apply its mind to this aspect of the conduct of the sale may amount to material irregularity. Mere substantial injury without material irregularity is not enough even as material irregularity not linked directly to inadequacy of the price is insufficient.."

In the instant case sale was not pursuant to a decree of the Court for release of the decretal debt. The property belonging to the APMC - a public body - was to be sold to fetch maximum price for the benefit of the APMC and public at large. In such a situation all the steps that are required to be taken for realizing the maximum price should have been resorted to by the APMC. So according to us the above referred decision of the Apex Court cannot be of any assistance to the additional 4th respondent-auction purchaser.

In the instant case the notification for the sale of the property of the APMC was published on 10th and 12th August 1997. The last date for submitting the offer was 19-8-1997 and the auction was to take place on 20-8-1997. On 16-8-1997 the Director -2nd respondent-stayed further proceedings initiated by the APMC. So the intending genuine purchasers did not come forward for putting forth their offers. In such a situation action on the part of the APMC to hold the auction on 20-8-1997 was against the public interest. The petitioner even if considered as a person who is championing his individual cause is justified in moving this Court because he was reasonably prevented from taking part in the auction sale in view of the interim order passed by the Director. Even though the petitioner has stated that he has moved this petition as a pro bono publico, the petition is not to be rejected on the ground that he is putting forth his individual claim. When his legitimate right to take part in the auction sale could not be exercised by virtue of the order passed by the Director, he is justified in moving this Court questioning the action of the APMC which was in flagrant violation of the directions given by the Director-2nd respondent. Viewed in this light, we are of the considered view that this Court is not to examine the maintainability of this petition as a public interest litigation in strict sense. We are convinced that on account of the illegal proceedings initiated by the APMC, the market committee is losing substantial amount by way of sale consideration of the property. The circumstances as to how contract is to be granted or what is to be assigned to the tenderers who offered the lowest amount cannot be the basis for deciding a case of this nature where the attempt on the part of the APMC should be to get maximum value of its land which is to be sold in public auction.

In Asia Foundation & Construction Ltd. Vs.
Trafalgar House Construction (I) Ltd. and others, (1997)

1 SCC 738 the Supreme Court observed :

" though the principle of judicial review cannot be denied so far as exercise of contractual powers of Government bodies are concerned, but it is intended to prevent arbitrariness or favoritism and it is exercised in larger public interest or if it is brought to the notice of the Court that in the matter of award of a contract power has been exercised for any collateral purpose.

We are convinced that these observations apply on all fours to the facts of the case on hand. The action of the APMC in not taking all steps to get maximum value has resulted in defeating the larger public interest. Since the larger public interest has been defeated, we are of the considered opinion that the sale sought to be confirmed in favour of respondent no.4 has to be set at naught.

The property which was sold for Rs.50.50 lacs is now shown to fetch Rs.75 lacs. To prove the bonafides of the offers made by the petitioner, he has deposited 50% of that amount, namely, Rs.37.50 lacs before this Court on 1-12-1997. This deposit, we must say, is as against the condition in the notification published by the APMC that 25% of the bid amount should be deposited within one month of the confirmation of the auction. It is worthwhile to note that the petitioner is offering to purchase the land on the same terms and conditions fixed by the Committee in auction notice issued on 10th and 12th August 1997. On account of the fact that the petitioner has come to this Court we are not inclined to give the land to him or to direct the APMC to execute the sale deed in his favour. Learned Counsel representing the petitioner has rightly and fairly submitted before us that he is prepared to compete with any intending purchaser in an open auction for the property. In this view of the matter, we direct the APMC to re-notify the sale of the land within three weeks from to-day giving opportunity to all intending purchasers to take part in the auction. In that Notification upset price of the property must be fixed at Rs.75 lacs. If in that auction sale the property is sold for any amount less than Rs.75 lacs, amount to make up Rs.75 lacs will be recovered from the petitioner. If the property is sold for amount more than Rs.75 lacs, the petitioner who is also getting a right to take part in the auction will not have equity

created in his favour.

The petitioner will be entitled to get Rs.20 lacs out of the amount deposited, released forthwith. Remaining amount of Rs.17.50 lacs will be released to him on his furnishing bank guarantee for the like amount in favour of the Registrar of the High Court.

The APMC is directed not to execute any title deed or documents in favour of 4th respondent creating any interest whatsoever in his favour on the land in question.

This petition is accordingly allowed. Rule is made absolute in the aforesaid terms, with no order as to costs.

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sharma